

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED]:TL-N-8066-98

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From FOIA Disclosure

date: January 26, 1999

to: District Director, [REDACTED]
Chief, Examination Division
Attn: [REDACTED]

from: District Counsel, [REDACTED]

subject: [REDACTED]

U.I.L. 162.00-00; 162.21-01

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ISSUE

Does Code section 162(f) potentially bar the deduction of legal fees relating to the negotiation of [REDACTED]'s (hereinafter "[REDACTED]") civil settlements with the [REDACTED] (hereinafter "the [REDACTED]") and the [REDACTED]?

CONCLUSION

Code section 162(f) does not potentially bar the deduction of legal fees relating to the negotiation of the civil settlements [REDACTED] reached during [REDACTED] with the [REDACTED] and the [REDACTED].

DISCUSSION

During a January 22, 1999 meeting regarding [REDACTED], the question arose whether Code section 162(f) potentially bars the deduction of [REDACTED]'s legal fees relating to its [REDACTED] civil

settlements with the [REDACTED] and the [REDACTED].¹
We conclude that section 162(f) does not potentially bar the deduction.

The Treasury Regulations provide specifically that "[t]he amount of a fine or penalty does not include legal fees and related expenses paid or incurred in the defense of a prosecution or civil action arising from a violation of the law imposing the fine or civil penalty * * *." Treas. Reg. § 1.162-21(b)(2). The rationale for that regulation is that section 162(f) bars deductions the allowance of which "would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof." S. Rept. 91-552 (1969), 1969-3 C.B. 423, 597. It does not frustrate public policy to allow a deduction for the cost of hiring a lawyer to assist with a defense. Commissioner v. Tellier, 383 U.S. 687, 694 (1966). The Tax Court has accordingly reasoned that section 162(f) does not apply to legal fees relating to fines and similar penalties. See Duncan v. Commissioner, T.C. Memo. 1993-370 n.11, aff'd in part and rev'd and remanded in part on other issues, 68 F.3d 315 (9th Cir. 1995); Meersman v. Commissioner, T.C. Memo. 1993-47; Allied-Signal, Inc. v. Commissioner, T.C. Memo. 1992-204, aff'd by unpublished opinion, 1995-1 U.S.T.C. ¶ 50,151 (3d Cir. 1995).

You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any questions, you should call [REDACTED] at [REDACTED].

[REDACTED]
District Counsel

cc: Revenue Agent [REDACTED]

¹ The facts, as we understand them, relating to [REDACTED]'s civil settlement with the [REDACTED] and the [REDACTED] are set forth fully in our memorandum dated January 21, 1999 which addresses the applicability of Code section 162(f) to amounts paid under the civil settlements.

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